THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

W.P.No. 23166 of 2004

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% 20.04.2005.

Immadi Seetharamaiah, S/o.Subrahmanya, Kirana Business, D.No.15-121 to 123, Chinapeeru Saheb Street, Medara Bazar, Chilakaluripet, Guntur District.

.....Petitioner

Vs.

$ The Commissioner, Chilakaluripet Municipality, Chilakaluripet, Guntur District.

.....Respondent

Counsel for the Petitioner: Mr. Ravi Shankar Jandhyala

Counsel for the Respondent: Mr. S. Nageswara Reddy

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>Head Note:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO: 3397 of 2005

Between:

Immadi Seetharamaiah, S/o.Subrahmanya, Kirana Business, D.No.15-121 to 123, Chinapeeru Saheb Street, Medara Bazar, Chilakaluripet, Guntur District.

..... PETITIONER

AND

The Commissioner, Chilakaluripet Municipality, Chilakaluripet, Guntur District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a writ or order or direction, more especially one in the nature of writ of Mandamus or any other appropriate direction, declaring the action of the respondents in issuing the notice No.ROC.411/2005 dated
21-2-2005, as illegal, arbitrator, capricious and violation of principles of natural justice and consequentially stay all further proceedings including the demolition of the alleged violations in the building constructed in premises situated at 15th block, old D.No.15-106 new Door No.15-121 to 123 of Chilakaluripet Municipality, consequent upon the passing of orders in ROC.411/2005 dated 21-2-2005, issued by the respondent and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.RAVI SHANKAR JANDHYALA

Counsel for the Respondent: MR.S.NAGESWARA REDDY

The Court made the following:

ORDER:

The case of the petitioner that he, having purchased the building bearing old D.No.15-106 of Chilakaluripet Municipality under a registered sale deed dated 03.01.1991, has been in possession and enjoyment thereof and applied for sanction from the respondent-municipality for construction of a new building in place of the old building and constructed the building as per the building laws and approved plan, within the compound wall, without touching the compound wall, and since all others, except him, living in that street, belong to other community, they, with a view to send him out of that street and knock away his building, started interfering with his possession and enjoyment of his house, he filed O.S.No.6 of 2005 and obtained injunction against his neighbours, and so, they, by influencing the respondent, got issued a notice in ROC.No.411/2005 dated 21-02-2005 under Section 217(1) & (2) of the A.P. Municipalities Act, 1965 (the Act), alleging that he encroached into the road by projecting the sunshade, though there is no encroachment and since the

said notice was issued with ulterior motives the same is liable to be set aside.

2. Respondent filed his counter affidavit alleging that the house of the petitioner does not have a compound wall on any side and that the petitioner who sought permission for construction of a new building, was granted permission to construct the same in accordance with the rules, constructed the building deviating from the sanctioned plan, and made encroachment on to the road, notice under Section 217 (1) & (2) of the Act was issued to him to remove the deviated constructions, and he without giving a reply thereto, filed the petition falsely alleging that he constructed the building according to the plan without making any encroachments. The allegation that the said notice was issued due to political pressure is not true, and notice under Section 192 of the Act was also issued to the petitioner.

3. The contention of the learned counsel for the petitioner is that since all others living in the street, except the petitioner, belong to one community, they, with an intention to cause wrongful loss to the petitioner, though he did not make any encroachments, and did not deviate from the approved plan and constructed the building strictly in accordance with the plan, made the respondent, issue the impugned notice alleging that he projected the sunshade in the balcony, on to the road and thus had encroached on to the road, and since minor deviations, if any, can also be regularized by levying compounding fee, respondent issuing the impugned notice without issuing a show cause notice or calling upon the petitioner to get the alleged deviation regularized by paying the compounding fees, with a mala fide intention, the notice impugned is liable to be set aside, and so the petition may be allowed with a direction to the respondent to regularize the deviations, if any, by receiving compounding fees from the petitioner. He contended that if a Commissioner is appointed question whether there is any encroachment or not could be verified and so a Commissioner may be appointed.

4. The contention of the learned standing counsel for the respondent is that since petitioner encroached on to the road by projecting the sunshade in the balcony and made construction hindering free flow of traffic, residents of that locality made complaints and so a notice under Section 217 (1) & (2) of the Act was issued, and

petitioner without sending a reply had filed this petition.

5. Question whether petitioner constructed the building as per the sanctioned plan or not, and whether he made any deviations and had encroached into the public road, is a pure question of fact. Petitioner, instead of approaching a Civil Court, hurriedly approached this Court under Article 226 of the Constitution, even without sending a reply to the show cause notice. When the petitioner constructed the sunshade on the balcony, is not stated in the affidavit of the petitioner. If the petitioner wanted to protect the sunshade constructed in the balcony of first floor, projecting on to the road, he should have obtained permission under Section 193 of the Act before making such a construction. It is stated in the counter affidavit of the respondent that notice under Section 192 of the Act also was issued to the petitioner. Had the projection been in existence from over the statutory period only can be petitioner can claim compensation, as per Section 192(2) of the Act before removal of the projection. Otherwise, he cannot question the impugned notice issued with regard to removal of an encroachment.

6. If the petitioner feels that the building constructed by him is in accordance with the building plan and rules, and that he did not deviate from the sanctioned plan, and did not make any encroachments, his remedy is to file a suit in a Civil Court and establish that fact. Petitioner by questioning the notice issued to him under Section 217 of the Act, by invoking the jurisdiction of this Court under Article 226 of the Constitution, cannot seek appointment of a Commissioner to find out whether he made an encroachment or not, as it is well known that generally this court while exercising jurisdiction under Article 226 of the Constitution would not go into disputed questions of fact.

7. If the petitioner had an intention to regularize the deviations if any made, by paying compounding fees, he has to make an application to the respondent, but cannot use this petition as a vehicle to carry his intention to compound, to the respondent, and expect the respondent to respond, at the stage of arguments, that too when such plea is taken without any foundation in the pleadings. So, petitioner is at liberty either to file a suit and establish that he did not make any encroachment,

and that he constructed the building strictly in accordance with the plan and so the notice impugned cannot be given effect to by the respondent, or file an application for regularization of the deviations or encroachments made, by paying the necessary fees as per the rules and G.Os. in force, but cannot question the impugned notice in this petition.

8. Hence, the petition is dismissed. No costs.

(C.Y.Somayajulu, J.)

Date: 20-04-2005

Cvrk

Note: L.R. copy to be marked.

..... REGISTRAR

To

1. The Commissioner, Chilakaluripet Municipality, Chilakaluripet, Guntur District.
2. 2 CD copies
3. 1 CC to MR.BALAGOPAL